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25 UNITED STATES DISTRICT COURT

26 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

27 ORLANDO DELGADO, an
28 individual,

Plaintiff,

v.

FEDERAL EXPRESS
CORPORATION, a Delaware
corporation and DOES 1-10,
inclusive,

Defendants.

CASE NO.: C 08-03576 MMC

Honorable Maxine M. Chesney,
Courtroom 7, 19th Floor

**STIPULATION AND ORDER FOR
PROTECTIVE ORDER REGARDING
CONFIDENTIAL INFORMATION OF
PLAINTIFF ORLANDO DELGADO**

Complaint Filed: June 30, 2008
Trial Date: October 26, 2009



1 WHEREAS, plaintiff ORLANDO DELGADO (“Plaintiff”) and defendant
 2 FEDERAL EXPRESS CORPORATION (“FedEx” or “Defendant”) are presently
 3 engaged in discovery in the above-captioned case; and

4 WHEREAS, FedEx has sought or will seek testimony, information and
 5 documents that Plaintiff contends contain confidential and private information
 6 concerning Plaintiff; and

7 WHEREAS, FedEx has sought or will seek testimony, information and
 8 documents that a third party contends contains confidential and proprietary business
 9 information; and

10 WHEREAS, after engaging in a good faith effort to meet and confer the parties
 11 wish to resolve this issue informally;

12 NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED THAT
 13 THE COURT MAY, ~~AND HEREBY DOES~~, ENTER AN ORDER as follows:

14 1. The following information and documents that reflect such information,
 15 which are not generally publicly available and are designated by the Plaintiff as
 16 “Confidential,” shall be deemed “Confidential Information:”

17 A. Any documents served in *Delgado v. TNT USA, Inc.* Case No.
 18 CIV 455723 and removed to U.S. District Court, Northern
 19 District of California, Case No. C 06-04789 (hereinafter “the
 20 TNT action”).

21 B. Any transcripts from hearings or depositions in the TNT action.

22 C. ~~Any and all settlement agreements made between the parties in~~
 23 ~~the TNT action.~~ [E.M./R.S.]

24 D. Any and all deposition testimony by Delgado that concerns or
 25 relates to the TNT action.

26 2. Designation of any documents that are deemed “Confidential” shall be
 27 made by stamping each page comprising any such document, copy or excerpt thereof
 28 with the legend “CONFIDENTIAL” at the time of production.



1 3. Good cause exists to limit the disclosure of this information and these
2 documents. The documents purport to contain Plaintiff's confidential and private
3 information, including information about his health and financial status, as well as
4 confidential and proprietary information of TNT USA Inc. ("TNT"), in that the
5 information and documents reveal certain business practices of TNT, such as the
6 amount of any settlement to Plaintiff in that lawsuit. As set forth herein, Plaintiff and
7 TNT would suffer irreparable harm if the information and documents were disclosed
8 without the protections set forth in the Stipulation and Order:

9 4. "Qualified Person" as used herein means: (i) Federal Express
10 Corporation, including its attorneys and employees necessary to assist counsel in the
11 above-captioned action; (ii) any expert consulted by Plaintiff, Defendant or by
12 Plaintiff's or Defendant's attorneys in the preparation of this action for trial; (iii)
13 Plaintiff; (iv) Sudeen, Salinas & Pyle, its partners and employees; and (v) Law Office
14 of Enrique Martinez, its partners and employees; and (vi) the Court.

15 5. Confidential Information may only be disclosed to Qualified Persons and
16 then only to the extent counsel in good faith believes that such disclosure is necessary
17 to the prosecution or defense of this litigation. Confidential Information may only be
18 disclosed to Qualified Persons after they have read this Stipulation and Order, agreed
19 in writing to be bound by it and have signed the Acknowledgement and Agreement
20 attached hereto as Exhibit A.

21 6. Each Qualified Person will maintain Confidential Information in
22 confidence and will not use it or reveal it to anyone who is not a Qualified Person
23 without the prior written consent of opposing counsel and TNT or, in the absence of
24 such consent, an order of the Court authorizing such disclosure.

25 7. Counsel for the parties may, in the course of deposing a person who is
26 not a Qualified Person, show the witness Confidential Information and examine the
27 witness concerning such information provided that: (a) the witness and court reporter
28 have read this Stipulation and Order agreed in writing to be bound by it and signed the



1 Acknowledgement and Agreement attached as Exhibit A; and (b) no persons are
2 present during those portions of the examination concerning Confidential Information
3 except the witness, Qualified Persons, persons present at the request of Defendant or
4 Plaintiff or their counsel, and a court reporter.

5 8. The transcript of deposition testimony containing Confidential
6 Information shall be bound separately, marked by the court reporter "Confidential"
7 and treated as Confidential Information subject to the terms of this Stipulation and
8 Order.

9 9. The disclosure of Confidential Information to a Qualified Person without
10 designating it as Confidential shall not constitute a waiver of the producing party's
11 obligation and right to designate such information as Confidential at a later time and,
12 if so designated, the information shall thenceforth be treated as Confidential subject to
13 all terms of this Stipulation and Order.

14 10. If a party wishes the Court to consider a confidential document in
15 connection with any motion filed in this action that party shall make an
16 Administrative Motion to File Under Seal ("Administrative Motion"); any request
17 should be made to the District Judge with an appropriate showing supporting the
18 request to file the documents under seal. TNT shall receive notice of such
19 Administrative Motion no later than the time of filing of such Administrative Motion.
20 The request must comply with the requirements of Civil Local Rule 79-5, and the
21 request will seek to file under seal only the confidential portions of such documents.

22 11. If either party wishes to use Confidential Information at trial of this
23 action, the parties will, in advance, confer in good faith with each other and with TNT
24 to agree upon a method to protect such Confidential Information. Either party may,
25 with simultaneous notice to TNT, apply to the District Judge for a mechanism to
26 maintain the confidentiality of discovery material designated as Confidential
27 Information at trial.

28 12. At the conclusion of this lawsuit (including appeals, if any), all



1 Confidential Information in the possession of any Qualified Person or any other
2 person who has received such information pursuant to this Stipulation and Order,
3 together with all copies, extracts and summaries thereof, shall be returned to the party
4 that produced it, with written confirmation provided to TNT. No Confidential
5 Information may be used in any other judicial or other proceeding or for any other
6 purpose, except (i) where required by legal process or by law for lawful purposes, or
7 (ii) upon consent of the party who produced the Confidential Information and consent
8 of TNT.

9 13. This Stipulation and Order may be modified by a later Stipulation and
10 Court Order or, if the parties and TNT are unable to agree, by the court on the
11 application of a party with simultaneous notice to TNT. This Stipulation and Order
12 shall be binding on all Qualified Persons and all other persons having knowledge of
13 its terms and any violation thereof may be punishable by contempt.

14 14. If Defendant FedEx in good faith disagrees with the Confidential
15 designation of the documents protected herein, Defendant shall inform counsel for
16 Plaintiff in writing of the disagreement with simultaneous notice to TNT. Unless a
17 prompt challenge to Plaintiff's confidentiality designation is necessary to avoid
18 foreseeable substantial unfairness, unnecessary economic burdens, or a later
19 significant disruption or delay of the litigation, neither a Party nor TNT waives its
20 right to challenge a confidentiality designation by electing not to mount a challenge
21 promptly after the original designation is disclosed. Defendant must initiate a
22 challenge in good faith and must begin the process by conferring directly (in person or
23 by telephone) with counsel for Plaintiff and TNT, explaining the basis for its belief
24 that the confidentiality designation was not proper and giving Plaintiff and TNT an
25 opportunity to review the designated material, to reconsider the circumstances, and if
26 no change in designation is offered, to explain the basis for the chosen designation.
27 Only after this meet and confer process may Defendant seek judicial intervention, at
28 which point Defendant may file a motion under Civil Local Rule 7 (and in compliance



1 with Civil Local Rule 79-5, if applicable) that identifies the challenged material and
2 sets forth in detail the basis for the challenge with simultaneous notice to TNT. Each
3 such motion must be accompanied by a declaration affirming the declarant has
4 complied with the meet and confer requirements of this paragraph and set forth with
5 specificity any and all grounds for the challenge. As the designating party, Plaintiff
6 has the right to oppose the motion and bears the burden of demonstrating good cause
7 for protection of the documents.

8 15. If any third party to the case, including but not limited to TNT, in good
9 faith disagrees with the Confidential designation of the documents protected herein, or
10 the failure to so designate, the third party shall inform counsel for Plaintiff and TNT in
11 writing of the disagreement within fifteen (15) days of learning of the designation.
12 Upon receipt of written notification of the disagreement, counsel for Defendant,
13 Plaintiff, TNT and any other third party will confer in an effort to resolve the dispute
14 without Court intervention. If the dispute is not resolved within fifteen (15) days of
15 Plaintiff's receipt of the written notification, the third party may move the Court for a
16 confidential designation modification or vacation of the Confidential designation at
17 issue, with simultaneous notice to TNT if a third party other than TNT so moves.
18 Such application shall describe with specificity the particular materials for which the
19 designation or failure to designate is being challenged and set forth with specificity
20 any and all grounds for the challenge. As the designating party, Plaintiff has the right
21 to oppose the motion and bears the burden of demonstrating good cause for protection
22 of the documents.

23 //

24 //



1 DATED: April 24, 2009 SUNDEEN SALINAS & PYLE

2
3 By: /s/
4 Robert Salinas, Esq.
5 Attorneys for Plaintiff

6 DATED: April 24, 2009 LAW OFFICE OF ENRIQUE MARTINEZ

7
8 By: /s/
9 Enrique Martinez, Esq.
10 Attorneys for Plaintiff

11 DATED: April 23, 2009 FEDERAL EXPRESS CORPORATION

12
13 By: /s/
14 Mireya A.R. Llaurodo, Esq.
15 Attorney for Defendant

16
17 IT IS SO ORDERED, provided that the parties' agreement to designate as confidential the
18 entirety of documents identified above in paragraph 1 does not constitute a finding by the Court that
19 said documents, or any portion thereof, are, in fact, confidential within the meaning of Civil Local
20 Rule 79-5.

21 DATED: May 8, 2009

22
23
24 
25 U.S.D.J. Maxine M. Chesney



EXHIBIT A

Acknowledgment and Agreement

I have read and agree to be bound by the terms and conditions of the foregoing
Stipulation and Order for Protective Order Regarding Confidential Information of
Plaintiff Orlando Delgado.

Signature: _____

Printed Name: _____

Date: _____

